

**STATE OF CALIFORNIA  
FRAUD ASSESSMENT COMMISSION**

**Summary Meeting Minutes  
Sacramento, California  
June 16, 2010**

In attendance: Lisa Middleton, Chair, and Commission Members Lilia Garcia, Don Marshall, John Riggs, and Jiles Smith.

Others present: Rick Plein, Deputy Commissioner, Enforcement Branch, California Department of Insurance; Eric Weirich, Bureau Chief, Enforcement Branch; Vanessa Himelblau, Senior Staff Counsel, Legal Division.

Chairperson Lisa Middleton opened the meeting by recognizing John Standish, Division Chief, Enforcement Branch, who will be retiring at the end of July 2010 after 31 years of public service.

Ms. Middleton also recognized Bill Zachry, the previous Chair of the Fraud Assessment Commission (FAC), for his 10 years of service on the FAC and his many contributions to the fight against workers' compensation fraud in California. Mr. Zachry was presented with a plaque from the FAC. Gary Fagan, Chair of the California District Attorneys Association (CDAA) Insurance Fraud Sub-Committee; Dominic Dugo, San Diego District Attorney's Office; and Rick Plein, Deputy Commissioner of the Enforcement Branch also recognized Bill Zachry for his commitment to the FAC.

Chairperson Middleton raised the issue as to whether there were any corrections to the submitted minutes from the February 10, 2010 meeting.

**Motion**

Commission member Don Marshall made the motion to accept the minutes as submitted. Commission member Jiles Smith seconded the motion.

**Public Comment**

Steve Zeltzer, Chair of the California Coalition for Workers' Memorial Day, commented on the fact that the meeting minutes and transcripts of the meetings are not posted on the Department's website.

**Action**

The minutes were unanimously passed.

Chairperson Lisa Middleton stated that she was unaware as to why the minutes and transcripts are not posted on the website, but that she will work with the Department to review the potential for getting them on the website and will report back at the next meeting.

Rick Plein, Deputy Commissioner, stated that the minutes are posted on the website once they are approved by the FAC.

Ms. Middleton brought up the need for a sub-committee on the FAC to establish by-laws. She recommended John Riggs and Don Marshall be part of the committee along with Vanessa Himelblau, Senior Staff Counsel, Legal Division. The sub-committee will be tasked with reviewing the research completed by Ms. Himelblau and to report at the September FAC meeting with a recommendation for the by-laws.

### **Motion**

Chairperson Lisa Middleton called for a motion to approve the recommendation for a sub-committee to establish by-laws. Commission member Jiles Smith made the motion. Commission member Lilia Garcia seconded the motion.

### **Public Comment**

No comments were made.

### **Action**

The recommendation for a sub-committee was unanimously passed.

### **Fraud Division Report**

Rick Plein, Enforcement Branch Deputy Commissioner began with an overview on the distribution of funding to district attorneys through the Review Panel process.

Mr. Plein reported that per California Code of Regulations, the Insurance Commissioner convenes a Review Panel to evaluate counties' applications for workers' compensation funding. The Panel convened on June 2, 2010. The department received 38 applications, representing 42 counties, requesting \$33,892,555 in funding.

The Review Panel was comprised of the following: Two members of the Fraud Assessment Commission, Lisa Middleton and Jiles Smith; the Director or designee of the Department of Industrial Relations, David Rowan, Chief Deputy Director; an expert in consumer crimes and prosecutions appointed by the Insurance Commissioner, Dale Banda, retired CDI Deputy Commissioner; and the Deputy Commissioner of the Enforcement Branch or his designee, Rick Plein.

The Review Panel members evaluated each application and forwarded their funding recommendation to the Insurance Commissioner. The recommendation went forward to the Insurance Commissioner for his determination, with the advice and consent of the Fraud Division as to the most effective distribution of the money.

Mr. Plein suggested the FAC members who sat on the Review Panel give a report on their experience and the criteria used to evaluate the applications.

Mr. Smith stated that the representatives from the District Attorney's Offices made great presentations at the Review Panel. He made a suggestion that in the future, the Commission use some business criteria in the matrix used to evaluate the applications. He also suggested the district attorneys focus their outreach on the five major employers in their area. One area of major importance to Mr. Smith when reviewing the applications was the percentage of restitution received. "In some situations it was adequate and some not so adequate", stated Mr. Smith.

Chairperson Lisa Middleton thanked everyone who participated in the grant reviews and stated, "I think we sometimes lose track of the amount of time and energy that goes into the preparation for receiving the grants by Rick and his team, the work that is done by the various counties in preparing their grants."

Chairperson Middleton commented on the importance of a balanced caseload and consistency within the programs, and stated that she is impressed with the progress being made in a number of the counties. One area that she feels the Commission needs to address and provide greater attention to is the challenges posed in some of the smaller counties. Ms. Middleton feels it's one of the Commission's obligations to work with CDI and those counties to ensure they are in a better position to address workers' compensation fraud in their areas.

Deputy Commissioner Plein submitted into the record a letter to the FAC from Insurance Commissioner Poizner... "The Review Panel recommended a total funding distribution of \$29,827,500. I understand and appreciate the dedication and effort of the Review Panel, and I've accepted the recommendation as submitted."

### **Public Comment**

Gary Fagan, Chair of the CDAA Insurance Fraud Sub-Committee, commented that the overall remarks of the district attorneys throughout the process were that the panel was well prepared and read the applications. He also stated that many district attorneys still feel as though the application is too long and time consuming, which results in a loss of productivity. Mr. Fagan made a recommendation that the Commission review the application again to try and streamline the process.

Mr. Fagan also addressed his concerns about how the Review Panel evaluates restitution collected. "District Attorneys are mandated by Marsy's Law to pursue restitution. It is a legal obligation that we are required to pursue and we take seriously, particularly in economic crimes", stated Mr. Fagan. The problem is that some defendants are out of business and have no money so it's difficult to collect payments from these individuals. Some counties have the ability for the district attorney's office to pursue restitution on their own while in other counties it's the probation office that handles restitution.

Sandi Trend made a recommendation to the Fraud Assessment Commission to investigate Yolo and Sacramento counties for failure to enforce federal and State laws with regard to a specific case.

Dina Padilla opposed the budget for Yolo, Sacramento, Marin, and Los Angeles counties with regard to specific cases and counties that various injured workers have had issues with. Ms. Padilla also recommended that the injured workers be represented on the FAC.

Steve Zeltzer, Chair of the California Coalition for Workers' Memorial Day, commented that he had a problem with the lack of prosecution of the insurance industry for fraud. "How many insurance companies have been prosecuted in California for workers' comp fraud, how many have been successfully prosecuted, how many insurance executives

are in jail for workers' comp fraud", asked Zeltzer. Mr. Zeltzer also opposed funding for Sacramento, Yolo, and Los Angeles counties.

Commissioner Jiles Smith raised the issue regarding using restitution collected as a matrix for evaluating applications. Mr. Smith stated this was only one of the criteria used in the review of the applications. He used the amount of restitution listed in the application the year before. "It's a basic principal that we use in private industry to measure", stated Mr. Smith. The calculation was not used to eliminate a county, but rather was just a basic measurement.

### **Motion**

Chairperson Lisa Middleton called for a motion to accept the funding determination of Insurance Commissioner Poizner for the distribution to the district attorneys of California for fiscal year 2010/11. Commission member Don Marshall made the motion. Commission member Jiles Smith seconded the motion.

### **Action**

The motion passed unanimously.

### **Public Comment**

Steve Zeltzer commented on the requirement of the Fraud Assessment Commission to have a Labor Representative on the Commission. Lilia Garcia is listed as a labor representative; however, she works for an employer association.

Two additional public comments were made by Dina Padilla and Sandi Trend in reference to specific cases and counties the individuals had issues with.

Commissioner Lilia Garcia clarified that she is a labor representative<sup>1</sup>. She stated that she represents employers who are underbid by other employers who violate workers' rights in order to offer lower bids to clients. Commissioner Garcia added that she also represents the non-union janitorial workers.

Chairperson Lisa Middleton announced that the next FAC meeting will be on September 8, 2010 at the Fraud Division Headquarter's Office at 10:00 a.m. At this meeting the FAC will be making a determination for the aggregate funding for fiscal year 2011/12. We will also try to have those individuals who were unable to attend this meeting speak at the September meeting.

Commissioner Garcia recommended that the Commission have a representative from the Professional Employer Organizations (PEOs) come to speak at the next meeting. Ms. Garcia stated that we've had a large increase in the growth of PEOs and fraud committed by PEOs, and it seems the district attorneys and CDI have limited experience in dealing with these cases.

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<sup>1</sup> The Fraud Assessment Commission requested this sentence be amended. The original sentence read, "Commissioner Lilia Garcia clarified that she is not a labor representative." The word "not" was taken out of this sentence. The summary meeting minutes were voted on and approved at the September 8, 2010 FAC meeting.

Chairperson Lisa Middleton announced that there is another FAC meeting scheduled for November 16, 2010 at the Anaheim Sheraton Park Hotel at 8:30 a.m. This meeting will be held in conjunction with the annual California District Attorneys Association training. This will be an opportunity for discussion between the FAC and district attorneys about how we can more effectively fight insurance fraud.

Commissioner Smith recommended the Commission discuss at one of the upcoming meetings whether or not to focus on making an effort to fund all counties throughout California in order to have one hundred percent coverage of the State. He also recommended the representatives from the Watsonville Law Center give an update at an upcoming meeting.

### **District Attorneys**

Mr. Fagan stated that the district attorneys are facing some challenges in terms of funding and personnel. Most counties are funded through real estate tax revenues which have decreased throughout the state. Law enforcement funding, which is funded in part by Prop 172 and vehicle licensing fees, have also decreased. Mr. Fagan recommended that the CDI and FAC join him in addressing these issues with the Legislature, the newly elected Insurance Commissioner and Governor in order to educate them on the special fund nature of insurance fraud funding.

The meeting adjourned.